

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1453 of 1997

in

SPECIAL CIVIL APPLICATION No 7547 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR. K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

KANAIYALAL NARANDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AY KOGJE for Appellant

CORAM : CHIEF JUSTICE MR. K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 03/07/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

Judgment of the learned single Judge in Special Civil Application No.7547 of 1996 is challenged in this appeal. The appellant is a teacher working in an Aided School. He challenged the Government Resolution dated 27th July, 1989. The Government servants as well as the teachers working in Aided Schools are given Leave Travel Concessions. In 1984, the Government liberalised its scheme for L.T.C. and even permitted to claim encashment of the leave travel facility. As regards the encashment of the L.T.C. for the block period of 1992-'95, the Government issued a Resolution on 1st January, 1992. Under Clause (7) of that Resolution, it was stated that the L.T.C. would not be available to the employees, who have entered in service after 1st April, 1989, who have

more than two living children. This Resolution was challenged by the appellant before the learned single Judge.

The appellant contended that he is having a family having more than two living children and as he entered service after 1st April, 1989, he is being denied the facility of L.T.C., whereas employees who joined service prior to 1st April, 1989 and who have more than two living children, are given this benefit and this is violative of Article 14 of the Constitution as there is unequal treatment. The appellant contended that the Government ought to have treated all the employees equally and the restriction imposed on the ground that those who have entered in service after 1st April, 1989 shall not have the L.T.C. facility is bad. According to the appellant, fixing of such a cut off date is to be removed and the appellant shall also be allowed to avail the L.T.C.

The learned single Judge held that the Government has taken a policy decision in furtherance of the Government policy of family planning as a population control measure and as it is absolutely necessary for the Government to provide such a decision, the restriction imposed by the Government cannot be said to be bad. The view taken by the learned single Judge is assailed before us.

We heard the appellant's counsel. The counsel for the appellant submitted that even though the

appellant joined service after 1st April, 1989, he is also entitled to get this benefit and the denial of such benefit is illegal as the persons, who joined the service before 1st April, 1989 and having more than two children are allowed this privilege. The counsel for the appellant submitted that the Government should have restricted the LTC benefit to four members of the family, thereby reducing the Government expenses and instead of doing so, the Government imposed a cut off date and denied the privilege to the persons, like the appellant. It may be noted that the Government passed the Resolution as early as on 27th July, 1989, a copy of which is produced as Annexure 'B'. The Resolution states that the benefit of leave travel concession to Government employees entering in service thereafter is restricted upto two children. In the Resolution, it is further stated that in furtherance of the concept of small family norm of two children, Government is pleased to decide that the Leave Travel Concession (including encashment)

for new entrants in Government Service shall be restricted to families not having more than two living children. In other words, the Government employees who have more than two living children, shall not be entitled for LTC (including encashment) for himself / herself and as well as for other members of the family. The concerned Government employees would be required to give a certificate to this effect each time they claim Leave Travel Concession. This order was made applicable to the Panchayat employees, employees in the educational institutions, Government Corporations, Boards and to the Grant-in-aid institutions. So, right from 1989, the Government had issued such a direction that the employees having more than two living children are not entitled to the benefit of LTC. The appellant has not challenged the said Resolution in the Special Civil Application, but has chosen to challenge only the later Resolution passed in 1992, wherein Clause (7) was included. Therefore, it is clear that Clause (7) in 1992 Resolution, which provided encashment facilities for the block period 1992-'95, was on the basis of the earlier Resolution passed on 27th July, 1989. Therefore, it cannot be said that a privilege that was being enjoyed by the Government servants was taken away by the subsequent Resolution.

Counsel for the appellant relied on the decision in State of Rajasthan v. Gurcharan Singh Grewal and others, reported in AIR 1990 SC 1760. That was a case where the Rajasthan State Government gave benefit of compensatory allowance to the employees of the State Electricity Board. It was provided that those who joined the Beas Project after 14.9.1972 will not be entitled to the benefit of compensatory allowance. The Court noticed that those who joined after 14.9.1972 had no option regarding the compensatory allowance and they were also not given the terminal cash benefits. In fact, the employees, who joined after 14.9.1972, were not given the right of option. The Supreme Court held that the compensatory allowance was given on account of the extra cost of maintenance of two establishments and also as an incentive to work on the Project. These considerations would apply in the case of all Officers whether they joined the Project before 14.9.1972 or after that date. On these premises, it was held that there was violation of Article 14 in making a hostile discrimination. In the instant case, it cannot be held that similar employees are given different treatment. The Government restricted the benefit to the employees, who have two living children and who joined after 1st April, 1989. This policy was adopted as an incentive to encourage small

family as a drive towards family planning. As it is part of the policy of the Government, it cannot be said that the State has adopted an irrational basis for this policy. It is one of our important National policies that we should have small family and the State Government is fully justified in adopting such policy and giving incentives to persons who have small family. The appellant has chosen to challenge this policy after long lapse of time. The learned single Judge was fully justified in holding that there was no discrimination or violation of Article 14 of the Constitution of India. This Letters Patent Appeal is without any merit and it is accordingly dismissed.

(apj) ****